IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1231 of 1995

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHUKAR MADHAVRAO BHAVSAR - Applicant(s)

Versus

BHIKHIBEN WD/O DECEASED BABALDAS BAPULAL RANA & 2 - Opponent(s)

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Appearance :

MR SP HASURKAR for Petitioner No(s).: 1.

MR KM PARIKH for Respondent No(s).: 1 - 1.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 13/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 4th May, 1993 passed by the learned Joint District Judge, Vadodara in Regular Civil Appeal No.148/1985, the appellant (defendant in Rent Suit No.366/1982) has preferred the present Revision Application under Section

29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The respondents are the heirs and legal representatives of the landlord-plaintiff. The plaintiff instituted Rent Suit No.366/1982 in the Court of Small Causes, Vadodara for recovery of the suit premises and the arrears of rent due. The suit premises was leased to the defendant for residence at a monthly rent of Rs.40=00. The plaintiff sought recovery of possession of the suit premises on the grounds that the defendant was in arrears of rent since 1st May, 1978 and that he had acquired suitable alternative accommodation. In answer to the summons issued by the Court, the defendant did not appear before the Court. However, one Shantaram Madhavram filed application Exh.8. He stated that he was the brother of the defendant Madhukar Madhavrao and that he was residing in the suit premises with the defendant Madhukar Madhavrao. He, therefore, prayed that the wife of the defendant Madhukar Madhavrao, the said applicant Shantaram Madhavram and his mother Sobhdaben be impleaded as party defendants. The defendant Madhukar Madhavrao

also appeared before the Court and contested the suit. The learned trial Judge, by judgment and order dated 10th October, 1984, held that the matter was covered by Section 12(3)(a) of the Rent Act. As the defendant had failed to pay the amount of arrears of rent within one month from the date of the receipt of the suit notice, decree for eviction was inevitable. Considering the alternative, whether the defendant was entitled to protection against eviction as envisaged by Section 12(3)(b) of the Rent Act, the trial Court held that the defendant had not complied with the conditions mentioned in Section 12(3)(b) of the Rent Act. He was, therefore, not entitled to protection under Section 12(3)(b) of the Rent Act either. Feeling aggrieved, the defendant preferred Regular Civil Appeal No.148/1985 in the Court of District Judge, Vadodara. The said Appeal has been dismissed by the learned Joint District Judge on 4th May, 1993. Therefore, the present Revision Application.

Both the Courts below have recorded concurrent finding that the defendant was tenant in default; that he was in arrears of rent since 1st May, 1978; that the rent was payable by the month; that there was no dispute as to

the standard rent of the suit premises; that the defendant failed to pay the amount of rent due within one month from the date of the receipt of the notice of demand given under Section 12(2) of the Rent Act. In view of the aforesaid finding the decree for eviction as envisaged by Section 12(3)(a) of the Rent Act was inevitable.

Mr.Hasurkar has pointed out that in the suit notice Exh.22 the plaintiff did demand education cess. He has submitted that since the defendant had to pay the education cess the rent cannot be said to be payable by the month. The matter, therefore, would not be governed by Section 12(3)(a) of the Rent Act. He has submitted that the defendant had indeed paid certain rent in the trial Court pending the suit. The defendant was, therefore, entitled to protection under Section 12(3)(b) of the Rent Act. I am unable to agree with Mr.Hasurkar. It is true that the plaintiff had, under the suit notice Exh.22, demanded education cess and that should bring the matter out of the purview of Section 12(3)(a) of the Rent Act. However, to earn protection under Section 12(3)(b) of the Rent Act the defendant was required to pay or to

tender in the Court the amount of rent then due before the first date of hearing of the suit. Admittedly, the defendant did not appear before the Court until after the Court had decided to proceed ex-parte against the defendant and the issues were framed. Evidently the defendant did not pay or tender the amount of rent then due on or before the first day of hearing of the suit. The defendant having failed to comply with the conditions mentioned in Section 12(3)(b) of the Rent Act forfeited right to protection conferred by Section 12(3)(b) of the Rent Act. Further, decree for eviction had already been executed against the defendant before he approached this Court.

In view of the above discussion the Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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